

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7604/2009 & CM 3739/2009 & 431 of 2010

UNION OF INDIA & ANR. Petitioners

Through: Mr. Sanjeev Sachdeva with
Mr. Preet Pal Singh and
Mr. Vibhu Verma, Advocates.

versus

MRS. VEENA KOHLI Respondent

Through: Mr. Chetan Gupta, Advocate.
Mr. Moti Prasad, Advocate for intervenor
in CM No. 431/2010.

W.P.(C) 9438/2009 & CM 7304/2009

UNION OF INDIA & ORS. Petitioners

Through: Mr. Sanjeev Sachdeva with
Mr. Preet Pal Singh and
Mr. Vibhu Verma, Advocates.

versus

MRS. AKANSHA LAL Respondent

Through: Mr. Vijay Kumar with
Ms. Mahip Datta, Advocate

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

ORDER
28.07.2010

1. These petitions involve the interpretation of Section 1(2) of the Right to Information Act, 2005 ('RTI Act') which states that the RTI Act will extend "to the whole of India except the State of Jammu and Kashmir (J&K)".

Facts in W.P. (C) No. 7604 of 2009

2. Writ Petition (C) No. 7604 of 2009 has been filed by the Union of India challenging the order dated 3rd February 2009 passed by the Central Information Commission ('CIC') directing the Petitioner to provide information to the Respondent Mrs. Veena Kohli in respect of a Court of Inquiry held in an Army Unit located at J&K.

3. The facts are that during April 2006, late Captain Sumit Kohli, the son of the Respondent was serving with the 18 Rashtriya Rifles in the State of J&K. On 30th April 2006 at about 1520 hrs, a sound of burst fire from an automatic weapon was heard from the quarters of Captain Sumit Kohli. He was found slumped on a chair with his head hanging down and one AK-47 Rifle lying alongside the chair. He was found dead. The incident was reported to the civil police who, after investigation, concluded that the death of Capt. Kohli was due to a self-inflicted injury and was, therefore, a suicide. It is stated that the matter was also investigated by a Court of Inquiry under Rule 177 of the Army Rules.

3. On 20th May 2007, the Respondent filed an application with the Central Public Information Officer ('CPIO') of the Petitioner seeking *inter alia* copies of the FIR, ballistic report, post-mortem report, inquest proceedings, forensic report, hystopathological report etc. The stand taken by the Petitioner was that the above information was held by the J&K Police gathered during the course of their investigation and that the said police authorities were not obliged to furnish such information

under the RTI Act “as the said Act is not applicable to the State of Jammu and Kashmir”.

4. The CPIO by an order dated 28th August 2007 rejected the request of the Respondent accepting the stand taken by the Petitioner and further held that in terms of Rule 184 of the Army Rules, the Respondent is not entitled to the report of the Court of Inquiry as she was not subject to the Army Act.

5. Simultaneous with the filing of an appeal before the Appellate Authority, the Respondent also filed a complaint/appeal before the CIC. By the impugned decision dated 3rd February 2009, the CIC negated the plea of the Petitioner that the RTI Act could not apply to the central government establishments within the State of J&K only on the basis of Section 1(2) of the RTI Act. It was held that “Central Government establishments, wherever located, would squarely come under this Act and cannot get exemption merely because they are located in some areas of the country to which this enactment does not extend.”

6. Accordingly, the Petitioners were directed to provide the information within 15 days of the receipt of the order. It was further observed in para 5 as under:

“5. In case the said Court of Inquiry proceedings contain any information which, in the opinion of the Public Authority, has implications for India’s security, such information need not be disclosed as exempt under Section 8(1)(a) of the Act but only after the CPIO clearly states so in a reasoned

order.”

7. While directing notice to issue in the writ petition on 20th March 2009, this Court stayed the operation of the impugned order.

8. The Respondent filed a reply pointing out that all the documents sought by the Respondent are in the possession of the Petitioner. It is pointed out that the Army has appointed the Public Information Officers (‘PIOs’) for its units stationed in the State of J&K as have other central government Ministries and Departments. A list of such PIOs taken from the Army’s own website and the other central government websites has been annexed to the counter affidavit. It is stated that PIOs have also been appointed for the Indian Embassies and High Commissions located outside India. The point that is emphasized is that in relation to the public authority which, in this case is the Ministry of Defence, the appropriate government is the central government and, therefore, any information pertaining to the working of such public authority should be made available by the PIO irrespective of whether it is located within the State of J&K. It is pointed out that the purport of Section 1(2) is clear that for the State of J&K the central enactment, i.e., the RTI Act would not apply. It is stated that the State of Jammu and Kashmir has its own RTI Act.

Facts in W.P.(C) No. 9438 of 2009

9. In the companion Writ Petition (Civil) No. 9438 of 2009, the facts are that the Respondent Akansha Lal submitted an application on 27th

November 2008 to the RTI Cell, Army Headquarters, seeking *inter alia* an attested copy of the complete Court of Inquiry proceedings instituted against her husband Major General A.K. Lal, VSM in respect of the complaint made by one woman officer that she was sexually harassed by Major General Lal. The Respondent Akansha Lal also sought a copy of the findings of the inquiry held to investigate the complaint of sexual harassment, an attested copy of the dak register, disciplinary case files of her husband held with HQ 14 Corps, HQ Northern Command, statutory complaint file etc.

10. The stand of the Petitioner by its letter dated 24th December 2008 was that a copy of a statutory complaint could not be provided. As regards the other information sought, the Respondent was informed that her application was being transferred to the Headquarters Northern Command/HQ 14 Corps. Thereafter she was again informed that since the RTI Act is not applicable to the State of J&K, she could not be provided with the information. The Respondent pointed out that the Court of Inquiry was also held in the State of J&K. It may be mentioned here that the husband of the Respondent was at the relevant time serving as the General Officer Commanding ('GOC'), 3 Infantry Division in the State of J&K when the complaint against him was made.

11. In the appeal filed by the Respondent before the CIC, it was contended that the RTI Act did not apply to the State of J&K. By the impugned order dated 27th March 2009, the CIC held as under:

“This is a clear misinterpretation of the provisions of Section 1 of the Right to Information (RTI) Act. This law does not extend of the State of Jammu and Kashmir implying that the public authorities of that State Government would not be governed by this law. It also does not mean that the Central Government public authorities located within the geographical limits of that state would be outside the purview of this law.”

12. Thereafter in para 5, it was observed and directed as under:

“5. It is noted that the Appellant had asked for several other information beside the copy of the court of enquiry report. The CPIO has not made any reference to any of those in his original reply. His reply to the Appellate merely mentioned that the information as available and permissible under the Right to Information (RTI) Act was being given in the succeeding paragraph and the succeeding paragraph mentioned only about the extract of a reply received from some Division of the Public Authority regarding her query in paragraph 9 of her application. The CPIO was required to either provide her information or to deny it, partially or wholly, based on specific provisions of law. In this case he has done neither. We, therefore, direct the CPIO to reconsider his decision within 15 working days from receipt of this order and either provide the information sought excluding the report of the Court of Inquiry or if he wants to deny any information, he should pass a speaking order giving the legal basis for denying any such information. After receiving the reply/information from the CPIO, the Appellant will be free to approach the first Appellate Authority in appeal and, thereafter, if still not satisfied, to approach the CIC in second appeal.”

13. While directing notice to issue in Writ Petition (C) No. 9438 of 2009 on 29th May 2009, this Court stayed the impugned order.

14. This Court has heard the submissions of Mr. Sanjeev Sachdeva, learned counsel appearing for the Petitioners and Mr. Chetan Gupta, learned Advocate appearing for the Respondent Ms. Veena Kohli and Mr. Vijay Kumar Gupta, learned counsel appearing for Mrs. Akansha Lal. The learned counsel for both parties reiterated the submissions made by them before the CIC.

Purport of Section 1(2) of the RTI Act

15. Section 1(2) of the RTI Act which states that the RTI Act does not extend to the State of J&K only means that if there are public authorities under the control of State of J&K and located exclusively within the State of J&K and they hold information, then such information cannot be accessed by filing applications under the RTI Act with such public authorities in the State of J&K. For instance, there would be no State Information Commission under the RTI Act set up in the State of J&K. The idea behind this is that there should be a separate enactment providing for the right to information in the State of J&K. This, by no stretch of imagination, can mean that where the offices and establishments of the central government, including the army, are located in the State of J&K, no application can be made under the RTI Act to such offices and establishments under the RTI Act to seek the information held by them. Further, the mere fact that army personnel are in the State of J&K, does not preclude such personnel, or their

relatives as the case may be, from seeking information concerning themselves through an application made under the RTI Act to the army.

16. The issue really is 'who' the public authority is, which is holding the information and not 'where' it is holding such information. The public authority here is the army. The information held by it may pertain to an event which transpired in J&K, and may even be held by it in J&K. That by itself does not insulate such information from disclosure. Even information concerning the investigation by the J&K police, if available also with the army, would not be insulated only because the RTI Act does not apply to J&K. The problem of residents of J&K accessing information held by the central government may arise if there are no PIOs appointed by the central government or the army in the departments in J&K. However, conscious of this difficulty, some of the central government departments have in fact appointed PIOs in J&K. That is on a correct understanding of the legal position.

17. This Court concurs with the view expressed by the CIC that the Petitioner has proceeded on a misinterpretation of Section 1(2) of the RTI Act. In both these cases, it was erroneous on the part of the Petitioner to contend that the information pertaining to the son and the husband of the two Respondents respectively, cannot be provided as it pertains to events that transpired in the State of J&K.

18. In that view of the matter, while dismissing both Writ Petition (C)

7604 of 2009 and Writ Petition (C) 9438 of 2009, this Court directs that
W.P.(C) Nos.7604 & 9438/2009

the impugned order of the CIC in each case will be complied with by the Petitioner within a period of 15 days. In both the cases the consequential order that will be passed by the Petitioner, will be communicated to each of the Respondents within a period of 15 days thereafter.

19. The writ petitions are accordingly dismissed with costs of Rs. 5000/- each which will be paid by the Petitioner to each of the Respondents within a period of two weeks from today. Pending applications also stand disposed of.

20. Copy of the order be given dasti to the counsel under the signature of the Court Master.

S. MURALIDHAR, J.

JULY 28, 2010

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